



Oregon

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OREGON INSURANCE DIVISION BULLETIN INS 2009-9

TO: All interested parties including all health insurers and health care service contractors.

RE: House Bill 2116 (2009) and the Health Insurance Premium Assessment.

This Bulletin replaces Bulletin 2009-8, which is hereby withdrawn, and adds additional information regarding the calculation of the one percent increase to existing rates.

The State of Oregon Insurance Division of the Department of Consumer and Business Services (“DCBS”) is issuing this bulletin to assist health insurers, health care service contractors, and other affected parties to comply with House Bill 2116, passed by the 2009 Oregon Legislative Assembly (“HB 2116”).

Beginning October 1, 2009, all insurers and health care service contractors receiving premiums derived from health plan policies insuring Oregon residents or delivered or issued for delivery in Oregon (“health insurers”) pay an assessment to DCBS in the amount of one percent of the gross amount of premiums **earned**¹ during each calendar quarter no later than 45 days following the end of each calendar quarter. Health insurers must pay the assessment on the gross amount of premiums earned from both: (1) Policies insuring Oregon residents; **and** (2) Policies delivered or issued for delivery in Oregon. This means that the assessment must be paid on that portion of gross premiums earned from policies covering Oregon residents even when such policies are issued in another state.² For purposes of HB 2116, an “Oregon resident” has the meaning given in ORS 807.062.³ HB 2116 imposes an assessment on **health insurers** not on policyholders, members, or enrollees.

¹ To calculate the premiums earned for a calendar quarter, the insurer must deduct returned premiums from premiums received by the insurer and its insurance producers during a calendar quarter.

² DCBS has been advised that a request may be made to have the Legislative Assembly amend this language during the February 2010 special session. DCBS expects to have further guidance regarding this issue in October 2009. Insurers must pay the assessment as outlined in this Bulletin unless and until there is a change in the law.

³ ORS 807.062 states in relevant part, “(4) For purposes of this section, a person is a resident of this state if the person engages in any gainful employment in this state or takes any action to indicate the acquiring of residence in this state. Action to acquire residence includes, but is not limited to, doing any of the following:

(a) Remaining in this state for a consecutive period of six months or more regardless of the domicile of the person.

(b) Placing children in a public school without payment of nonresident tuition fees.

(c) Making a declaration to be a resident of this state for the purpose of obtaining, at resident rates, a state license or tuition fees at an educational institution maintained by public funds.

HB 2116 defines “health plan” to mean health insurance and insurance provided by health care service contractors as defined in ORS 750.005, excluding:

- Vision only policies;
- Dental only policies;
- Medicare Advantage plans;
- Medicare Part D plans;
- Long term care insurance;
- Health insurance issued to federal employees that is exempt from state taxation under federal law;
- Stop-loss policies that meet the requirements of ORS 742.065;
- Insurance policies issued to supplement liability insurance coverage;
- Automobile medical payment insurance;
- Insurance under which benefits are payable with or without regard to fault and that is required by law to be contained in a liability insurance policy or equivalent self-insurance;
- Reinsurance as defined in ORS 731.126;
- Workers compensation insurance; and
- Disability insurance.

Under HB 2116 “gross amount of premiums” has the meaning provided in ORS 731.808: “the consideration paid by insureds to an insurer for policies of insurance, and includes all premiums, assessments, dues and fees received or derived, or obligations taken therefor, by whatever term known.” Policy riders, such as dental and vision riders, are not considered stand alone policies, and therefore premiums earned from such riders are part of a health insurer’s gross amount of premiums that are subject to the assessment.

In addition to any information requested by DCBS, a verified form created by DCBS must accompany the assessment payment and must report:

- All of the health plans issued or renewed during the calendar quarter for which the assessment is paid; and
- The gross amount of premiums earned by line of insurance from all health plans issued or renewed during the calendar quarter for which the assessment is paid.

The one percent assessment imposed under HB 2116 is in addition to and not in lieu of any other tax, surcharge, or assessment imposed on the insurer and applies to premiums earned by health insurers from October 1, 2009 through September 30, 2013. The verified form is in development and should be completed no later than December 1, 2009. The first assessment payment is due

(5) Notwithstanding subsection (4) of this section, a person who is gainfully employed in this state shall not be considered a resident of the state if the person has taken no other steps to become a resident. This section applies, but is not limited to, a student at an educational institution maintained by public funds who is paying nonresident tuition rates.”

no later than February 15, 2010, for the premiums earned during the last calendar quarter of 2009.

Beginning October 1, 2009, health insurers may, but are not required to, increase existing premium rates by up to *one* percent. It has come to DCBS's attention that some carriers are calculating the increase in premiums to policyholders by dividing premiums by .99. This is not allowed by HB 2116. HB 2116 assesses insurers not policyholders. The bill limits the amount insurers are allowed to increase premiums to *one* percent. The result derived from dividing premiums by .99 is greater than one percent and therefore violates the law. Insurers that have calculated the increase inconsistent with this direction and that have already issued billing statements may refund amounts collected in excess of one percent by crediting customers in subsequent billings, by issuing separate refunds, or by other methods as long as all refunds are made during the 2009 calendar year.

An increase to existing rates may not be applied retroactively. If DCBS has already approved a health insurer's existing rate, the health insurer should not file for approval of the up to one percent premium rate increase allowed by HB 2116. If a health insurer that has already had its rates approved does increase its rates by an amount up to the allowed one percent, the insurer must include a notice that explains the rate increase with the first consumer billing reflecting the rate increase. The notice may be printed on the consumer billing, on a sticker affixed to the consumer billing, or on a separate insert with the consumer billing. Health insurers that bill electronically may include the notice electronically or may send the notice separately by mail. The notice should not be sent with subsequent future billings. House Bill 2116 does not prevent health insurers from communicating with customers in other ways; however, the notice may not be altered, modified, or added to, and health insurers may not list the assessment as a separate line item on consumer billing statements. The notice shall be as follows (choose one):

Notice 1: "Your health insurance premium reflects a new 1% tax. These tax funds together with federal matching funds will be used to provide health benefits for uninsured Oregon children."

or

Notice 2: "Beginning [insert date on or after October 1, 2009], your health insurance premium will increase to reflect a 1 percent tax on health insurance premiums. Funds raised by this tax will be matched more than 2 to 1 by the federal government and will provide access to health care coverage for 80,000 low and moderate-income Oregon children who currently have no health insurance. Ultimately, expanding health care coverage to those who are uninsured is expected to decrease the portion of your premium that currently helps offset the unpaid medical bills of others."

In future rate filings, health insurers may include amounts actually paid toward the assessment.⁴ In those rate filings, health insurers should report the amounts actually paid toward the assessment as an element of administrative expense or retention. Health insurers that include in

⁴ If a health insurer increases an existing, approved rate by the allowed amount, a subsequent rate filing that includes amounts actually paid toward the assessment must include only amounts actually paid toward the assessment in excess of the amounts charged as a result of the one percent increase in the existing, approved rate.

rate filings the amounts actually paid toward the assessment should not send one of the notices set out above with consumer billing statements.

Health insurers deriving premiums from contracts of insurance not subject to DCBS's rate approval authority may increase existing rates on such contracts by one percent but must also provide one of the notices set out above with the first consumer billing that reflects the rate increase. The notice, which must be in a form described above, may not be altered, modified, or added to, and health insurers subject to DCBS's rate approval authority may not list the assessment as a separate line item on the consumer billing statement. The notice should not be sent with subsequent consumer billings statements.

Health insurers that fail to timely pay the assessment or file a verified form are subject to a penalty of up to \$500.00 per day that the form is not filed or that the payment is not made. If DCBS determines that a health insurer has paid an incorrect amount toward the assessment DCBS will charge or credit the health insurer accordingly.

DCBS will conduct emergency rulemaking to codify certain sections of this bulletin. This bulletin takes effect immediately.

Dated this 18th day of September 2009 at Salem, Oregon.

(Signed)

Teresa D. Miller, Administrator
State of Oregon Insurance Division
Department of Consumer and Business Services